

REMARKS

Applicant has cancelled claims 24-26. Currently pending in the application are claims 23 and 27 through 42.

The Examiner has presented new grounds of rejection, including questioning of the benefit of the prior filed application USSN 09/504,487, asserting that the base pairs of claims 23 -26 were not presented in the prior application. Applicant respectfully traverses the rejection, in that the base pairs recited are those corresponding with the prior claims reciting the region of the sequences relative to the transcription start site and upstream of the TATA box, amended as requested by the prior examiner to the application. Thus the sequences recited are the same. However, in the interest of expediting prosecution, Applicant has amended the claims to recite SEQ ID NOs: 3, 4, 5 and 6, all present in the current and parent sequence listings and in the sequences of the figures. Thus it is believed the issue of priority has been rendered moot.

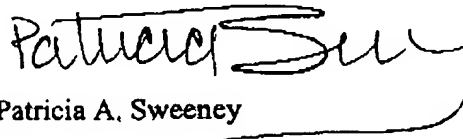
The examiner cites the Cigan *et al.* patent 5,795,753, as showing fragments of claims 32, 38-39 and 41. The Cigan patent is directed to a different sequence, the 5126 sequence, whereas the present application is directed to fragments of the MS45 sequence. Applicant respectfully traverses the rejection, in that a *prima facie* case of lack of novelty is not provided absent an indication that the sequence as claimed is a fragment of SEQ ID NO: 1 or 2. In the interest of expediting prosecution, the Applicant has amended claim 32 to indicate the fragment is at least 20 consecutive sequences of SEQ ID NO: 1 or 2, and which retains regulatory activity, as discussed in the application at page 24, lines 16-30. Thus it is believed the section 102 rejection is rendered moot.

In addition, Applicant has amended claims 27, 30, 33 and 37 to delete reference to the exogenous nucleotide sequence linked with the regulatory sequence encoding a protein. Applicant presents the amendment to clarify the claims, since the exogenous nucleotide sequence which disrupts male tissue function may do so without encoding a protein, such as, for example, when the exogenous sequence is an antisense sequence (see, for example, the specification at page 5 lines 15-25).

The examiner has also presented a double patenting rejection over the grandparent application, now US Patent 6,037,523, directed to the MS45 promoter, and those

For these reasons it is respectfully requested that reconsideration and allowance of the claims be granted. In the event the Examiner believes there are issues remaining to be resolved regarding allowance of the claims, a telephonic interview is requested.

Respectfully submitted,



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